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2013 IL App (3d) 120300-U

Order filed November 22, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 9th Judicial Circuit,
Plaintiff-Appellee,) Knox County, Illinois,
)
v.) Appeal No. 3-12-0300
) Circuit No. 11-CM-714
TANIA E.-C.,)
) Honorable
Defendant-Appellant.) Scott Shipplett,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant made a knowing waiver of her right to a jury trial; and (2) the trial court conducted an adequate investigation into her posttrial claims of ineffective assistance of counsel.

¶ 2 Defendant, Tania E.-C., was convicted of three counts of endangering the life or health of a child (720 ILCS 5/12-21.6 (West 2010)). The trial court sentenced defendant to a term of two years' conditional discharge. On appeal, defendant argues that: (1) she did not make a knowing waiver of her right to a jury trial; and (2) the trial court conducted an inadequate inquiry into her

posttrial claim of ineffective assistance of counsel. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged by criminal complaint with four counts of endangering the life or health of a child. 720 ILCS 5/12-21.6 (West 2010). At a preliminary hearing, the trial court informed her of her right to have a "trial by a jury or a trial by a judge, which is called a bench trial."

¶ 5 At a subsequent pretrial hearing, defense counsel asked to waive defendant's right to a jury trial. The trial court asked defendant if anyone made any threats or promises to induce her to waive her right to a jury trial. Defendant responded in the negative. The court accepted her "waiver as knowing and voluntarily made" and set the case for a bench trial.

¶ 6 At trial, the court apprised defendant that defense counsel and the State had agreed to present evidence from a Child Advocacy Center interview and police reports by stipulation. Defendant indicated that she understood and agreed to the presentation of evidence by stipulation.

¶ 7 The stipulation stated defendant had four children, B.E-C., M.E-C., A.E-C., and D.H. Defendant lived with Stephen Hopping for five years. Hopping was D.H.'s father. Hopping was frequently left alone with the children and had been found an unfit parent. Hopping had a prior conviction for domestic battery to B.E-C.

¶ 8 Officer Todd Olinger's police report was attached as exhibit D to the stipulation. On August 30, 2011, Olinger met with Department of Children and Family Services investigator Clifford Adam regarding a child abuse complaint. The complaint alleged that B.E-C. came to school on August 29, 2011, with numerous bruises on his face. B.E-C. reportedly told a faculty member that Hopping had physically battered him on August 28, 2011.

¶ 9 Adam's interviews with B.E-C., M.E-C., and A.E-C. were also attached as exhibits to the

stipulation. In the interview transcripts, B.E-C. stated that, in addition to the August 28, 2011 incident, Hopping had battered him several other times. M.E-C. recalled hearing Hopping batter B.E-C. and reported that Hopping also beat her. A.E-C. also reported being abused.

¶ 10 Defendant testified that she was present during a 2009 incident in which Hopping shoved B.E-C. Defendant told Hopping that she could not let Hopping back in the home until he agreed to attend counseling. Defendant also recalled a separate incident in 2009 where Hopping spanked M.E-C. and A.E-C. Thereafter, defendant told Hopping not to spank her children. Until the August 28, 2011, incident, defendant's children never reported that Hopping was abusive, and defendant did not recall seeing any signs of abuse.

¶ 11 The court found defendant guilty of three counts of endangering the life or health of a child and sentenced defendant to two years' conditional discharge.

¶ 12 Defense counsel filed a motion for a new trial. At a hearing on the motion, defense counsel moved to orally amend the motion to include an allegation of ineffective assistance of counsel. Defense counsel told the court that defendant believed that he was ineffective because counsel did not call defendant's children to testify. Defendant told the court that counsel "didn't really do anything wrong besides listened to [her] request about having [her] son testify." Defense counsel responded that he did not call defendant's children to testify because there was some indication that B.E-C. had changed his statement, and counsel preferred to proceed on the written statement and contest the evidence instead of risking that the children's statements would continue to change. The trial court denied the motion, finding that defense counsel's decision to proceed by stipulation was strategic.

¶ 13

ANALYSIS

¶ 14

I. Jury Waiver

¶ 15 Defendant argues that she did not knowingly waive her right to a jury trial where she did not execute a written jury waiver and the court did not ask her if she understood her right to a trial by jury. Defendant's challenge to her jury waiver presents a legal issue that is subject to *de novo* review. *People v. Bracey*, 213 Ill. 2d 265 (2004).

¶ 16 The right to a trial by jury is a fundamental right guaranteed by the federal constitution (U.S. Const., amends. VI, XIV; *Duncan v. Louisiana*, 391 U.S. 145 (1968)) and the state constitution (Ill. Const. 1970, art. I, §§ 8, 13); *People v. Bannister*, 232 Ill. 2d 52 (2008)). The trial court has the duty to ensure that a defendant waives the right to a jury trial expressly and understandingly. *Bannister*, 232 Ill. 2d 52. "However, a trial court need not give any specific admonition or advice for a defendant to make an effective jury waiver." *Id.* at 66. Generally, a jury waiver should be made in writing. 725 ILCS 5/115-1 (West 2010). However, the absence of a written jury waiver does not require reversal as long as a defendant's waiver was made understandingly. *People v. Tooles*, 177 Ill. 2d 462 (1997).

¶ 17 Here, the absence of a written jury trial waiver does not require a remand. Defendant was apprised of her right to a jury trial at a preliminary hearing. At a later hearing, she appeared with defense counsel, who asked to waive defendant's right to a jury trial. Defendant told the court that no one had made any threats or promises to encourage her to waive her right to a jury trial. From this evidence, we conclude that defendant was apprised of her rights and did not object to defense counsel's request for the waiver. Therefore, defendant's jury trial waiver was understandingly made.

¶ 18

II. Ineffective Assistance

¶ 19 Defendant argues that the trial court conducted an inadequate inquiry into her posttrial claim

of ineffective assistance of counsel. This issue raises a question of law that we review *de novo*. *People v. Vargas*, 409 Ill. App. 3d 790 (2011).

¶ 20 Where a defendant makes a *pro se* posttrial motion alleging that trial counsel was ineffective, new counsel is not automatically required. *People v. Patrick*, 2011 IL 111666. Instead, the trial court should examine the factual basis of a defendant's claim. *People v. Moore*, 207 Ill. 2d 68 (2003). If the claim lacks merit or pertains only to matters of trial strategy, the court need not appoint counsel and may deny the motion. *Id.* "However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.* at 78. The extent of the trial court's examination of a defendant's claims may include one or more of the following: (1) questioning the trial counsel; (2) questioning defendant; and (3) the court's own knowledge of the trial counsel's performance in the trial. *People v. Jolly*, 2013 IL App (4th) 120981.

¶ 21 Here, the trial court inquired about the nature of defendant's ineffective assistance claims and allowed defendant to voice her own concerns. The court then asked counsel to reply to defendant's concerns regarding his decision not to call the children to testify. Defense counsel responded that he was unsure if the children's statements would change and decided to proceed using the transcribed statements. We do not find that the court's inquiry into defendant's ineffective assistance claim was inadequate. We agree with the trial court that defense counsel's decision was the result of strategy and not neglect of the case.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Knox County is affirmed.

¶ 24 Affirmed.